



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 10th day of October, 1997

SERVED: October 23, 1997

**U.S. -SOUTH AFRICA THIRD-COUNTRY
CODE-SHARE OPPORTUNITIES**

Docket OST-97-2911

FINAL ORDER AUTHORIZING THIRD-COUNTRY CODE-SHARE SERVICES

Summary

By this order we make final our tentative decision in Order 97-9-13 and select Northwest Airlines, Inc. and United Air Lines, Inc., to serve Johannesburg and Cape Town, South Africa, under code-share arrangements with third-country carriers.

Background

Effective November 1, 1997, the United States may designate two U.S. carriers to serve South Africa under code-share arrangements with third-country carriers as specified under U.S. Route A3 of the U.S.-South Africa Air Transport Agreement. An additional carrier may be authorized effective November 1, 1998, and another effective November 1, 1999.¹ By Order 97-9-13 we tentatively selected Northwest to serve via Amsterdam with KLM, its code-share partner, and United to serve via Frankfurt with Lufthansa, its code-share partner, for the two opportunities available November 1, 1997. We tentatively found each of their proposals superior to that of Delta Air Lines. We tentatively dismissed the application of Continental Air Lines, tentatively concluding that the carrier was not in a position to use the limited route opportunity since there was no bilateral aviation agreement with France providing for such operations or adequate reciprocity to otherwise warrant approval. Objections to our tentative decision were due September 29 and answers to objections were due October 6.

Responsive Pleadings

Only Continental filed an objection to our tentative decision. United filed an answer to Continental's objection.

Continental argues that the proposed awards of additional third-country code-share authority to Northwest and United will further impair Continental's ability to compete with these global alliances and will deprive the public of the service and competitive benefits of a new entrant alliance. Continental further argues that concerns raised by the Department regarding the lack of a bilateral aviation agreement with France to support the proposed code-share operations could be resolved by making an award to Continental contingent upon

¹ By Notice dated May 5, 1997, we solicited applications from carriers interested in using the first two opportunities available November 1, 1997, and stated that we would solicit applications at a later date for the remaining two opportunities available in subsequent years.

adequate reciprocity and/or temporary awards to Northwest and United, pending conclusion of a satisfactory aviation agreement with France. It, therefore, urges the Department to reconsider its tentative awards and to select Continental for one of two available designations for third-country code-share services.

United argues that Continental has raised no new arguments that have not previously been considered by the Department in previous cases where Continental has proposed third-country code-share services with Air France, and that the Department should not waste any further time addressing Continental's repetitive arguments.² United further urges the Department to issue a final order as soon as possible to facilitate commencement of service by the selected carriers.

Decision

We have decided to make final our tentative decision in Order 97-9-13 and to select Northwest and United for the two opportunities available November 1, 1997, to serve South Africa under third-country code-share arrangements.

The U.S.-South Africa Air Transport Agreement offers valuable opportunities for U.S. carriers to serve a market that currently receives service by only one U.S. carrier, from only two U.S. gateways. The Agreement also provides the operational flexibility to serve the market under code-share arrangements with third-country carriers. Given these valuable opportunities, we believe that it is in the public interest to maximize the level of U.S.-South Africa services available to the public, thereby facilitating development of the market. For reasons fully explained in our show-cause order, we find that the proposals of Northwest and United best meet this objective, and we will accordingly finalize our awards to these carriers.

Continental was the only applicant to challenge our tentative decision.³ We had tentatively dismissed its application because, as Continental itself acknowledges, there is no bilateral agreement with France that provides for such services and reciprocity with France would not support approval of the services on an extrabilateral basis. Continental has placed no argument before us in its objections that was not before us when we reached our tentative decision, and we remain unpersuaded that it should be granted an award in this case. As we noted in our show-cause order, two more opportunities remain available for U.S.-South Africa third-country code-share services--one in November 1998 and one in November 1999. Should the bilateral circumstances change, Continental and Air France would be free to submit applications for those opportunities. In the meantime, the public interest would not be well served by using one of the limited opportunities available to authorize services that could not be implemented until some future date, particularly when there are other carriers that are in a position to use them now.

As we stated in our show-cause order we will grant Northwest's application for an exemption and United's application for a certificate of public convenience and necessity for the proposed third-country code-share services via Frankfurt with Lufthansa.⁴ Consistent with our standard practice in limited entry markets, the certificate awarded to United is for a five-year period. In addition, we will grant the applications of KLM and Lufthansa for the proposed third-country code-share services with Northwest and United, respectively.

ACCORDINGLY,

² United specifically cites the *U.S.-India Third-Country Code-Share Opportunities Proceeding*, Order 97-2-26, and Order 97-9-16 where the Department authorized U.S.-Egypt third-country code-share services.

³ Delta, the other applicant in this proceeding, did not file objections to our tentative decision.

⁴ United had requested authority to serve South Africa via other unspecified intermediate points and to serve beyond South Africa to unspecified African points other than Zimbabwe. Consistent with our standard practice in comparative proceedings, we will grant United's certificate authority consistent with its proposal in this proceeding.

1. We grant Northwest Airlines, Inc., an exemption under 49 U.S.C. 40109 to engage in foreign air transportation of persons, property and mail between a point or points in the United States and the coterminal points Johannesburg and Cape Town, South Africa, via Amsterdam, the Netherlands;
2. We grant United Air Lines, Inc., a certificate of public convenience and necessity, in the form attached, authorizing service between a point or points in the United States and the coterminal points Johannesburg and Cape Town, South Africa, via Frankfurt, Germany, and beyond South Africa to Harare, Zimbabwe;
3. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificate shall become effective on the 61st day after its submission for section 41307 review or upon the date of advice from the President or his designee under Executive Order 12597 and implementing regulations that the President does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁵
4. The exemption authority granted in ordering paragraph 1, above, is effective immediately, for a period of two years from the date of service of this order;
5. We grant KLM Royal Dutch Airlines a statement of authorization under Part 212 of the Department's regulations to display Northwest's airline designator code on flights operated by KLM between Amsterdam, the Netherlands, on the one hand, and Johannesburg and Cape Town, South Africa, on the other;
6. We grant Lufthansa German Airlines a statement of authorization under Part 212 of the Department's regulations to display United's airline designator code on flights operated by Lufthansa between Frankfurt, Germany, on the one hand, and Johannesburg and Cape Town, South Africa, and beyond to Harare, Zimbabwe, on the other;
7. The statements of authorization granted KLM and Lufthansa in ordering paragraphs 5 and 6, above, are effective immediately for operations beginning November 1, 1997, and shall remain in effect for a period of two years from the date of service of this order;
8. The code-share operations authorized by this order are subject to the condition that Northwest, United, KLM, and Lufthansa comply with the provisions of section 399.88 of the Department's regulations, and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and the further condition that the foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, that the carrier selling such transportation accept all obligations established in the contract of carriage with the passenger (*i.e.*, the ticket), and that, the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
9. In the conduct of these services, we require Northwest and United to comply with the terms of their respective certificates of public convenience and necessity; KLM and Lufthansa to comply with the terms of their respective foreign air carrier permits; and all carriers to comply with the terms of the U.S.-South Africa Air Transport Agreement;

⁵ This order was submitted for section 41307 on October 10, 1997. On October 23, 1997, we received notification that the President's designee under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

10. We may amend, modify, or revoke the authorities granted by this order at any time at our discretion without notice or hearing;
11. We dismiss the application of Continental Airlines, Inc., without prejudice, for the necessary regulatory authorities to operate U.S.-South Africa third-country code-share services;
12. To the extent not granted, we deny all outstanding requests in Docket OST-97-2911; and
13. We will serve this order on Continental Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; the Ambassador of South Africa in Washington, D.C.; the Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (AFS-200).

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)



**Experimental Certificate
of Public Convenience and Necessity
for
Foreign Air Transportation
Route 747**

This Certifies That

United Air Lines, Inc.

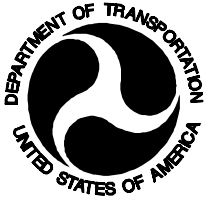
is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 97-10-14
On October 10, 1997
Effective on October 23, 1997**

**Patrick V. Murphy
Deputy Assistant Secretary for
Aviation and International Affairs**



Terms, Conditions, and Limitations

United Air Lines, Inc.

is authorized to engage in foreign air transportation of persons, property, and mail:

Between a point or points in the United States, the intermediate point Frankfurt, Germany, and the coterminal points Johannesburg and Cape Town, South Africa, and beyond South Africa to Harare, Zimbabwe.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.

(5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(8) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(9) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative or low-priced air transportation it proposed in its application for this authority.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with applicable international agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection

Issued by
Order 97-10-14
Route 747

proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(11) Exercise of the privileges granted by this certificate is subject to any other reasonable terms, conditions, and limitations that the Department of Transportation may prescribe in the public interest.

This certificate shall become effective October 23, 1997. It shall expire five years thereafter, unless the Department earlier suspends, modifies or deletes the authority.